



Wetland Bank Plan Preparation and Review

Easement Acquisition

May 28, 2015



Easement Requirement

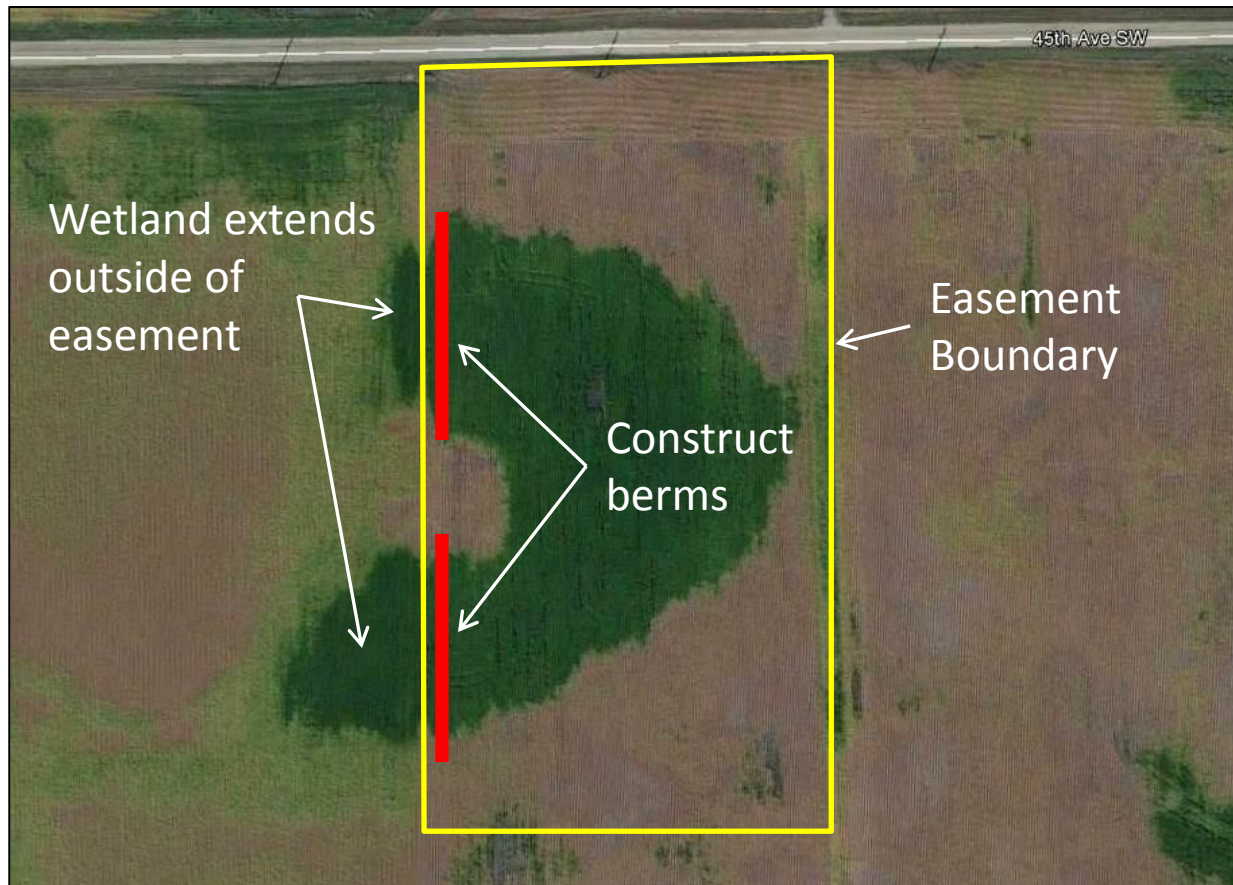
WCA

- Required for deposit.
- Must cover entire area.
- Must provide preservation of functions.
- Must provide title insurance
- Must grant access from a public road.
- Must survey boundary.

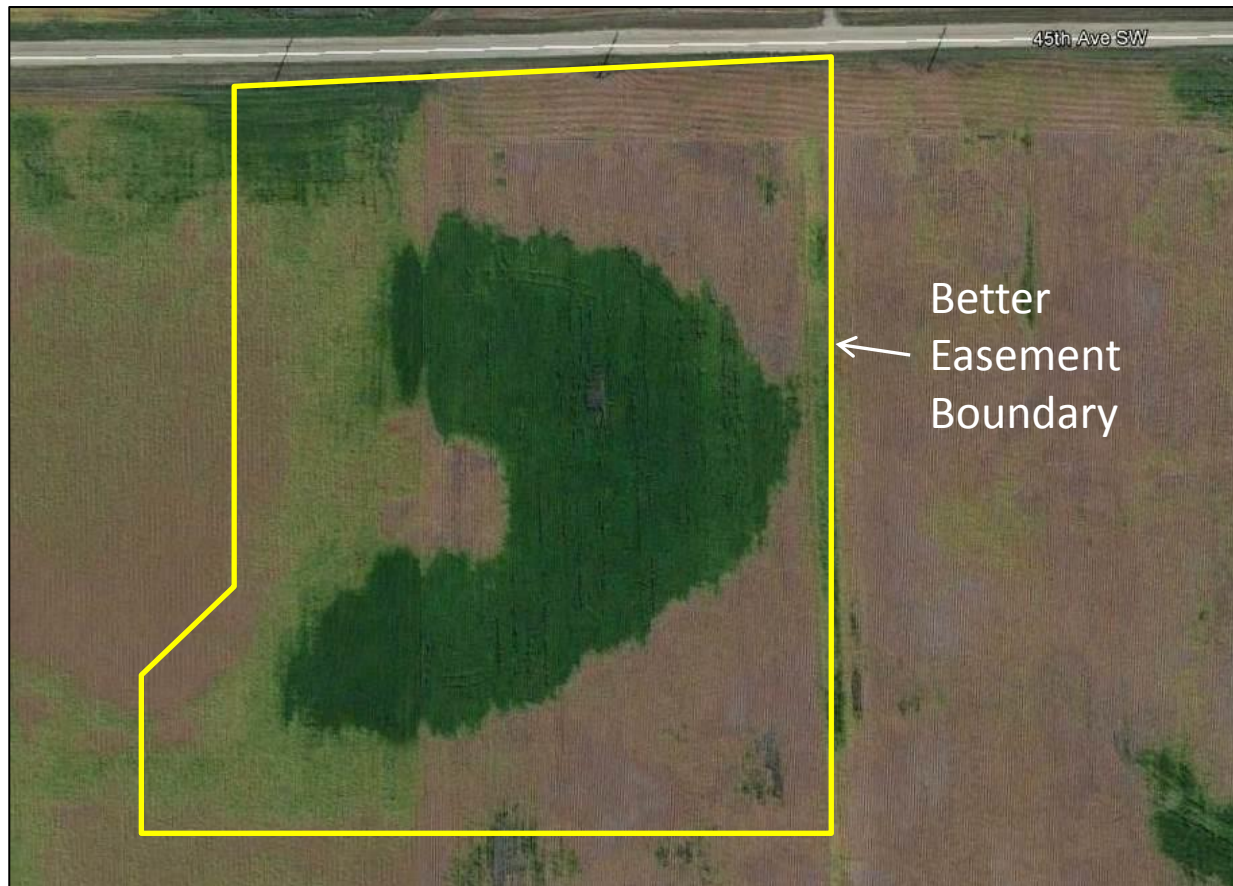
404

- Required for release
- Easement, title transfer, or restrictive covenants
- Held by third party
- Must monitor and enforce
- Prohibit incompatible uses
- Must notify prior to voiding or modification

Easement Requirement



Easement Requirement





Bottom Line

- State of Minnesota Conservation Easement required for all banks
- No easement, no bank



Easement Headaches

- Long, cumbersome process with a lot of back and forth:
 - Title Agent
 - Surveyor
 - Landowner
 - BWSR Easement Specialist
 - Attorney General's Office
- Landowners don't understand process or requirements.
- Frustration because bank plan approval is NOT the end of the process.



Minimize Headaches

- Inform landowners of requirements and cost early.
- Get Title Opinion early and coordinate.
- Make sure all parties with a real estate interest are willing to consent:
 - Mortgage Holders
 - Partners
 - Relatives
 - Mineral Rights Holders
 - Easement Holders
 - Others



Acquisition Process

- Title Opinion.
- Survey and Monument.
- Title Insurance.
- Easement Recording.



Title Opinion

- Highly recommended but not required.
- Initial step to identify known issues.
- Provides review and professional “opinion” of ownership and interests.
- Helps easement acquisition go faster.
- If opinion is wrong there is no protection.



Survey and Monument

- Scope of Work Document:
 - Requires professional land surveyor.
 - Surveyor provides Certificate of Survey.
 - Surveyor monuments boundary.
 - Surveyor provides legal description.
 - Access from public road may be included.



Title Insurance

- State of Minnesota named as insured.
- Insures title is free from defects, liens, and encumbrances.
- Bank sponsor pays for policy.
- Insurance amount based on anticipated credits.
- Title Commitment is required before easement process starts.



Easement Recording

- Initial review done by BWSR easement staff.
- Easement acquisition starts with:
 - Certificate of Survey
 - Title Commitment
 - Final Title Policy



Easement Recording

- BWSR prepares and sends to sponsor.
- Language cannot be altered by sponsor.
- Other interests must consent or subordinate to BWSR's easement.
- No easement, no bank.



BWSR Obligations

- Easement forever obligates the State with responsibilities.
- Protect the easement.
- Minimize risk and repairs.
- Minimize liability.
- Perpetually maintain functional lift.
- Responsible use of taxpayer funds.



Common Problems

- Public Drainage
- Drainage agreements
- Road ROWs
- Mineral rights
- Pipelines
- Utilities
- Mortgages
- Other property interests
- Adjacent land use



Summary

- Discuss easement acquisition process and costs with your client early in the process.
- Know the process and be ready for it.
- Get title opinion early.
- The state takes its easement obligations seriously and is not obligated to accept.



Questions?



Wrap-up for the Day

- Goal is to improve the product.
- Write a plan specific to each site.
- If it's important to the project, put it in the document.
- Assume reviewers are not familiar with the project or the site.
- Let us know your thoughts.



Questions?